Legislative Assembly of Saskatchewan

Report

of the

SPECIAL COMMITTEE

on

REGULATIONS

respecting

The White Paper on Proposals
for a new Chartered Accountants Act

and

The White Paper on Proposals
for Amendments to
The Management Accountants Act

April 1985

Legislative Building
Regina, Saskatchewan

April 11, 1985

To the Honourable
The Legislative Assembly of The Province of Saskatchewan

Honourable Members:

I have the honour to present herewith the Report of the Special Committee on Regulations on its reference of June 1, 1984, of the White Paper on proposals for amendments to *The Management Accountants Act* (Sessional Paper 211) and the White Paper on proposals for a new Chartered Accountants Act (Sessional Paper 210).

The operation and powers of professional bodies is a matter of interest to the professionals and the public alike as well as the Legislature which is the ultimate source of a professional association's authority. The Committee worked diligently to obtain information on the issues and to hear opinions from all those concerned.

I take this opportunity to record, with thanks, the contributions from the public and the work of the Members and staff of the Committee.

Respectfully submitted on behalf of the Committee.

M.J. Koskie
Chairman
MLA Quill Lakes

Table of Contents

	Page
Composition of the Committee	2
Order of Reference	3
Acknowledgements	4
Method of Operation	4
Management Accountants Act	
Report respecting the proposed amendments	7
Chartered Accountants Act	
Introduction	11
Procedures for making bylaws	12
Bylaw-making powers	13
Practice inspection	14
Inspection of trust funds	15
Specialization	16
Mandatory professional development	17
Manner and method of practice	17
Standards of fitness	18
Defining conflict of interest	18
Liability insurance	19
Lay representative on council	19
Discipline provisions	20
Right of appeal re: reinstatement	22
Liability of institute	23
Limitation of actions	24
Filing of membership lists with Department of Consumer and Commercial Affairs	24
Ministerial intervention	25
Use of "Certified Accountant" prohibited	26
Taxing of accounts	26
Incorporation	27
Appendix A (White Paper on Amendments to *The Management Accountants Act*)	31
Appendix B (White Paper on a New Chartered Accountants Act)	32
Appendix C (List of Briefs)	51
Appendix D (List of Oral Presentations)	52

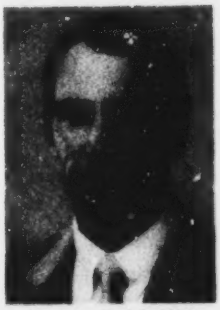
Composition of the Committee

Members

Mr. Murray Koskie, MLA
Chairman
(Quill Lakes)

Mrs. Evelyn Bacon, MLA
Vice Chairman
(Saskatoon Nutana)

Mr. Harry Baker, MLA
(Biggar)



Mr. John Gerich, MLA
(Redberry)

Mr. Lloyd Sauder, MLA
(Nipawin)

Mr. Grant Schmidt, MLA
(Melville)

Mr. Russ Sutor, MLA
(Regina North East)

Mr. Fred Thompson, MLA
(Athabasca)

Mr. Kim Young, MLA
(Saskatoon Eastview)

Staff

Ms. Gwenn Ronyk	Clerk to the Committee
Mrs. Lorraine Archer	Secretary
Mrs. Rose Zerr	Secretary

Order of Reference

On June 1, 1984, the Legislative Assembly referred two White Papers on accounting profession matters to the Special Committee on Regulations for review as follows:

> That the White Paper on Proposals for a new Chartered Accountants Act, Tabled as Sessional Paper No. 210, by the Honourable Mr. Andrew on June 1, 1984 be referred to the Special Committee on Regulations and that the said Committee shall have the power to send for persons, papers and records and to examine witnesses under oath in connection thereto.
> (Hon. Mr. Andrew/Hon. Mr. McLeod — Agreed June 1, 1984)

> That the White Paper on Proposals for Amendments to *The Management Accountants Act*, Tabled as Sessional Paper No. 211, by the Honourable Mr. Andrew on June 1, 1984 be referred to the Special Committee on Regulations and that the said Committee shall have the power to send for persons, papers and records and to examine witnesses under oath in connection thereto.
> (Hon. Mr. Andrew/Hon. Mr. McLeod — Agreed June 1, 1984)

Acknowledgements

The Committee wishes to acknowledge with thanks the contributions of individuals and organizations who made written and oral presentations to the Committee. The information presented and the opinions expressed were of valuable assistance in assessing the issues and in the preparation of this report.

The Committee also wishes to express its appreciation to Gwenn Ronyk, Clerk of the Committee, to Craig James, Clerk Assistant, for research assistance and to the staff of the Legislative Assembly Office and the Legislative Library. During a period in which the Committee did not have the assistance of its own legal counsel, the Committee wishes to record its appreciation to Ron Hewitt of the Department of Justice for his invaluable assistance.

Method of Operation

At its organizational meeting the Committee considered its terms of reference, determined the background material needed and the research assistance required. In October, 1984, the Committee published a notice in all Saskatchewan newspapers calling for written briefs and advertising public hearings which subsequently were held in Regina on January 10, 1985 and in Saskatoon on January 17, 1985.

The Committee received 19 written briefs and heard 19 oral presentations on the issues raised in the White Papers.

REPORT ON THE WHITE PAPER

ON AMENDMENTS TO

THE MANAGEMENT ACCOUNTANTS ACT

Sessional Paper No. 211 of 1983-84

REPORT RESPECTING THE PROPOSED AMENDMENTS TO *THE MANAGEMENT ACCOUNTANTS ACT*

The White Paper outlined proposed amendments to the Society of Management Accountants Act which would authorize the use of the designation C.M.A. (Certified Management Accountant) by its members who currently use R.I.A. (Registered Industrial Accountants). The Management Accountants requested the change so that their designation would more accurately reflect the training and function of most R.I.A.'s. Similar changes have been made in five other Canadian jurisdictions and is being actively pursued in several others.

The Committee considered briefs from eight groups and individuals and heard witnesses at public hearings in Saskatoon and Regina. The Certified General Accountants Association opposed the changes on the grounds that the use of "certified" in the designation of another accounting group would cause public confusion and would infringe on the goodwill and public confidence built up over a number of years by the C.G.A.'s.

The Committee agrees that in the accounting field the term "certified" has come to be identified in practice with one single group — the Certified General Accountants. The significance of this recognition is evident in that other accounting associations, including the R.I.A.'s, have taken legislative steps to protect their own designations. However, while there may possibly be some benefits that flow to C.M.A.'s from the use of "certified" the Committee feels that the change of designation will not cause any significant harm to the C.G.A.'s. As well, "certified" is a generic term and is used by other professional bodies not within the accounting field, e.g. Certified Nursing Assistants.

Further, the Committee does not agree that the use of the designation C.M.A. will create undue public confusion. The key words in the two designations are "Management Accountant" and "General Accountant." These terms more accurately distinguish the usual areas of practice of each group and therefore should create less confusion among the general public.

The Committee also recognizes some merit in the argument that the designation should be changed to C.M.A. in Saskatchewan to be consistent with the use of the designation in various other jurisdictions.

The Committee has some concerns, however, about possible confusion arising if members are able to use either or both the C.M.A. and R.I.A. designations.

Recommendation

The Committee recommends that the amendments to *The Management Accountants Act* to provide for the use of the C.M.A. designation be proceeded with. The Committee also recommends that the Act be further amended to provide that for up to one year after the Act comes into force, members be permitted to use either designation but not both, and that after the one year period all members must use the C.M.A. designation. The Act should, however, prevent use of the R.I.A. designation by anyone else in the future.

The Committee further recommends that the new amendments should be proclaimed only when the majority of other provinces have put into force similar provisions.

REPORT ON THE WHITE PAPER

ON PROPOSALS FOR A NEW

CHARTERED ACCOUNTANTS ACT

Sessional Paper No. 210 of 1983-84

INTRODUCTION

The White Paper on proposals for a new Chartered Accountants Act contains a draft act which reflects many changes requested by the Council of the Institute of Chartered Accountants of Saskatchewan. The existing Act had received only minor changes since 1934. Important changes were requested to the way bylaws are made and to the way the bylaw-making powers are described. Rather than a general section authorizing the making of bylaws "for the government of the members of the institute and for the carrying out of the objects of the institute", as exists in the present Act, the proposed act contains a provision which authorizes bylaws to be made for a list of thirty-two specific purposes. Other revisions include changes to disciplinary procedures and modification to standard reporting requirements.

In addition to its internal studies, the Committee received written briefs and held public hearings in Regina and Saskatoon in order to receive oral presentations from interested parties. The Committee appreciated the time and effort expended by all participants. While information was submitted on various matters, it was the area of bylaw-making powers, particularly the powers to establish programs such as practice inspection and mandatory continuing education, on which attention focussed.

Throughout its review, the Committee was keenly aware of the need to balance what sometimes appeared to be conflicting rights:

1) the right of a self-regulating profession to make decisions about the governing of the profession;

2) the right of the Legislature as the grantor of the rights and powers of the professional association to oversee the way in which the delegated authority is exercised; and

3) the rights of individuals both within and outside the profession.

The Committee believes that the delicate balance between the above principles ought to be respected in any revisions to the Act. The main thrust of the Committee's recommendations reflect this concern. The Committee approves the enunciation of specific bylaw-making powers in the Act but also recommends that certain limits to the powers be incorporated in the statute. The Committee's concern with programs that can be made mandatory as a condition of continued retention of the right to practise led to recommendations to delete certain powers. The Committee commends the Institute for its efforts to ensure that professional standards are maintained to enhance the protection of the public. Further recommendations are made to protect the users of professional services.

The order of the issues discussed in the report correspond roughly to the order of the relevant sections in the proposed act. However, not all matters raised in the briefs and hearings are commented on in the report. On several occasions the matter of licensing of practitioners in public accountancy was raised. While this is a significant matter worthy of detailed study, the Committee found that this matter was outside its current mandate.

With the changes recommended in the following report, the Committee believes that the revised Act will serve the Institute, the members and the public well.

PROCEDURES FOR MAKING BYLAWS

Section 13 of the proposed Act makes a number of changes in procedures for the making of bylaws by both the Institute in general meeting and by the council. As in the existing Act, the new Act permits council to make bylaws which must be confirmed by the Institute at its next annual meeting. The new Act, however, requires that a 3/4 majority vote of council be required to approve new bylaws. The Institute has also requested that council be required to notify members of all bylaw changes within thirty days of the change. The Committee is of the view that the new initiatives are a major improvement over the existing provisions.

In presentations to the Committee, however, many persons suggested that the bylaw-making power is concentrated in the hands of a minority, because relatively few members of the Institute attend annual meetings and only a simple majority of those attending and voting is required to confirm the actions of the council. As an alternative, it was suggested that bylaws be submitted to all members and that members have the choice to vote on the changes in person at the annual meeting or by means of a mail-in ballot.

Recommendation

While the members of the Committee have considerable concern that minority rights must be protected, the major problem, as in any democracy, is encouraging people to exercise their franchise. It is unlikely that apathy can be rectified merely by providing an opportunity to vote by mail. Each member of the Institute has an opportunity to attend the annual meeting, and evidence to the Committee indicated that attendance at annual meetings of the Institute compares very favourably to those of other professional associations. The Committee is unaware of any other professional association Act which permits a mail-in ballot and few contemplate approval of bylaws made by the governing body at a general meeting. On balance, therefore, the Committee is of the view that the proposed new section provides sufficient protection for rights of members of the Institute.

BYLAW-MAKING POWERS

Many submissions to the Committee expressed concern about the extensive bylaw-making powers set out in section 14 of the proposed Act. At least one witness was of the view that the actions of the council would become virtually unchallengeable because each possible area in which the council might wish to make bylaws has been articulated in section 14. In terms of statutory interpretation, bylaws made pursuant to a very specific power are more likely to be upheld than ones made under a very general bylaw-making power such as that contained in the present Act.

It should also be noted that in this province a further protection against the possible abuse of bylaw-making powers is found in the Legislature's annual review of professional association bylaws. New and amended bylaws must be tabled in the Legislative Assembly where they are then referred to the Special Committee on Regulations for review. At this time witnesses can be heard for or against the bylaws. The bylaws are reviewed to determine whether they are within the powers granted in the Act and whether they are prejudicial to the public interest. The powers of the Legislative Assembly to review and if necessary revoke such bylaws are laid out in section 38(2) of the proposed Act as follows:

> 38(2) Where any bylaw or amendment thereto laid before the Legislative Assembly is found by the Assembly to be beyond the powers delegated by the Legislature or in any way prejudicial to the public interest, such bylaw or amendment shall thereupon cease to have any effect and be deemed to have been revoked.

This is a standard provision in all professional acts in Saskatchewan.

Recommendation

In the interests of certainty, and to reduce, not promote, litigation, the Committee is fundamentally in favour of clear enunciation of the powers of the council. If potential for abuse exists, it should be addressed by narrowing of specific powers rather than by eliminating them and leaving the governing council open to challenges to its decisions.

The Committee recommends, therefore, that specific bylaw-making powers be enunciated in the Act, but that further elaboration be provided to ensure that bylaws made under these powers are consistent with the overall goal sought to be maintained. This philosophy is reflected in the recommendations on individual bylaw powers conferred by section 14.

The Committee also recommends that the standard provisions respecting the review of bylaws by the Legislative Assembly should be maintained.

PRACTICE INSPECTION

The proposed Act contains a specific bylaw-making power providing the authority to establish a practice inspection program as follows:

> 14(t) prescribing investigation and inspection of methods of practice and trust funds of members by members.

By far the most controversial element in the proposed revisions to the Act was the issue of practice inspection. A previous practice inspection program was halted after two years in operation pending the outcome of a court case challenging the validity of the authority for the program. The matter is currently under appeal. The proposed revisions to the Act would clarify and confirm the legal basis for the program.

Members of the Council of the Institute of Chartered Accountants of Saskatchewan appeared before the Committee to explain the purpose and operation of the practice inspection program. They identified the two main purposes of the program to be (1) to ensure that the standards set by the national chartered accountants body were adhered to by all C.A.'s and, (2) to protect the public and maintain public confidence.

The Committee received briefs and heard from several witnesses who objected to certain aspects of the practice inspection provisions. The main concerns included:

a) the undefined and unrestricted nature of the statutory provisions;
b) concerns about infringement of the confidentiality of client files;
c) the possibility of being inspected by competitors;
d) concerns that the program would not be continued universally;
e) concerns that inspection would ultimately lead to the restriction of practices of members; and
f) concerns that the direct and indirect costs of the program would be damaging to small firms.

Recommendation

Despite serious reservations even the most outspoken opponents were not opposed to the basic principle of practice inspection (*i.e.* that enforced accounting standards were in the best interests of the public and the profession as a whole).

It is the Committee's view that authority should be placed in the Act for a practice inspection program adequate to protect the public but with certain statutory restrictions and safeguards to alleviate the concerns noted above, many of which are shared by the Committee.

The Committee, therefore, recommends that the proposed Act be amended to provide authority for the establishment of a mandatory practice inspection program subject to the following restrictions:

1) The area of inspection be limited to the functions of auditing, accounting and reporting for which CICA standards exist.

2) Written consent of a client must be obtained not more than 30 days before inspection of that client's file.

3) The cost should be borne directly by the Institute through a central fund built up from annual fees in such a way to ensure that the cost is shared equally by all members who are subject to practice inspection.

4) No firm should be exempted from practice inspection.

5) Inspections are to be done on a rotational basis so that a firm is not inspected again until all other firms have been inspected, unless reasonable follow-up re-examination is called for.

6) Inspections should be restricted to: i) written office manuals and quality control procedures, and, ii) the review of no more than three client files per partner with the files to be selected by the practitioner being inspected.

The above restrictions will help serve to protect individual members from possible unfair use of the practice inspection system. While many of these provisions were followed by the previous inspection program, the inclusion of the safeguards in the legislation will enhance the view that the program is fair and equitably applied.

INSPECTION OF TRUST FUNDS

The proposed Act contains a specific bylaw-making power regarding the inspection of trust funds of members as follows:

> 14(t) prescribing investigation and inspection of methods of practice and trust funds of members by members.

Clause 14(t) gives the Institute the power to make bylaws prescribing investigation of trust funds of members. The Committee was given the impression that there are few instances where Chartered Accountants will maintain trust accounts for their clients, in their practice as a Chartered Accountant. Some members of the Institute may hold trust monies as receivers or trustees in bankruptcy, but this is not directly related to their practice as a Chartered Accountant. As well misappropriation of trust monies is an offence under the *Criminal Code of Canada*.

Recommendation

Although the incidence of the holding of trust funds by members in their practice as Chartered Accountants appears to be minimal at present, the Committee is of the view that the Institute should have the power to inspect trust funds if they become common, either generally, or in particular areas such as receivership. However, the Committee believes that assumption of responsibility for the inspection of trust funds requires consideration of a corresponding duty for the Institute to compensate individuals suffering loss from misappropriation of trust funds and, therefore, the Committee recommends that the Institute should be given the additional power to establish, by bylaw, a liability fund.

SPECIALIZATION

The proposed Act incorporates a specific bylaw making power to regulate specialist practice as follows:

> 14(z) prescribing for the issuance, suspension and revocation of specialist certificates to members and prescribing the use of any title indicating specialist practice by a member.

The Institute indicated that there was no present intention to enact bylaws to regulate specialization within the profession. It was felt, however, that it was important to have the power to regulate this area in order to protect the public in the event that problems began to develop.

One concern that was raised about this provision was that it could lead indirectly to practice restriction by requiring that it be necessary to have a specialist certificate to practice in certain areas. Another concern was that use of specialist titles could give an unfair competitive advantage to those using them, particularly at the expense of non-C.A.'s.

Recommendation

The Committee understands that the purpose of the specialization powers is not to impose practice restriction. However, in view of the fact that the Institute sees no current need for the provisions to be implemented, the Committee recommends that the powers be deleted from the proposed Act at this time. The Committee is of the opinion that removal of the power to regulate specialization is not unduly restrictive of the powers of a self-governing profession.

MANDATORY PROFESSIONAL DEVELOPMENT

The proposed Act incorporates a specific bylaw-making power providing the authority to establish procedures for mandatory professional development as follows:

> 14(y) prescribing procedures for periodic review of the qualifications of members, and prescribing the circumstances in which members are required to take refresher training programs and other courses of training.

This proposal has two facets, one being the periodic review of members' qualifications and the other being the related authority to require members to take retraining and other courses. The provision was included in the Act because the Institute felt that it was important for the profession to be able to ensure that its members maintained necessary skills. The Institute indicated, however, that there was no immediate need or intention to make qualification reviews and further education mandatory.

Concerns were expressed by several individuals over the bylaw-making power and the potential for abuse of the program.

Recommendation

The Committee recommends that the provision for mandatory professional development be deleted from the bylaw-making powers. While the Institute is to be commended for its recognition of the importance of continued professional development by its members, the Committee believes there are other means by which members maintain adequate levels of professional competence; eg. through professional reading or through frequent interaction with other professionals. The profession and the public will continue to be well served by the enhancement and promotion of educational opportunities currently available to members on a voluntary basis.

MANNER AND METHOD OF PRACTICE

The proposed Act incorporates bylaw-making powers as follows:

> 14(r) prescribing standards of professional conduct, competency and proficiency of members and students
>
> 14(s) prescribing the manner and method of practice of members and students

Concern was expresssed to the Committee that permitting Council to prescribe the "manner and method of practice" and "standards of . . . competency and proficiency" of members could permit Council to limit members to practice in specified areas. This concern probably arises primarily from the issue of practice inspection (discussed elsewhere) and must be considered in that context.

Recommendation

The Committee is of the view that while it is probably not the intention of clauses 14(r) and (s) to permit council to restrict the practice of members, it is recommended that the clauses be deleted or reworded to clarify the probable intent so that the clauses do not permit restriction of the practice of members but still allow council to set standards for the practice of chartered accountancy.

STANDARDS OF FITNESS

Submissions to the Committee pointed out that the wording of proposed clause 14(m) permitting bylaws to be made prescribing "standards of fitness and moral character for the registration of members and students " might suggest that the Institute could bar membership on the grounds of physical (or related) fitness.

Recommendation

It is recommended that the wording of clause 14(m) be clarified to ensure that fitness relate solely to factors related to practice as a chartered accountant.

DEFINING CONFLICT OF INTEREST

The proposed Act incorporates a bylaw-making power regarding conflict of interest as follows:

> 14(x) defining activities which constitute a conflict of interest.

In empowering council to pass bylaws defining activities which constitute a conflict of interest, the proposed Act may have gone too far. The passage of a bylaw creates an obligation on a member which can be the subject of disciplinary proceedings where the conduct is, in effect, on proof of the facts, deemed to be improper.

Recommendation

The Committee sees nothing wrong with the Institute providing guidelines on conflict of interest in the nature of professional ethics, which could be used as factors for consideration of a complaint against a member by the discipline committee, but is of the view that these standards should not be ensconced as standards which must be met. The Committee expresses the same concerns with the words of clause 14(r) "prescribing standards of professional conduct".

LIABILITY INSURANCE

The proposed Act contains a specific bylaw-making power regarding professional liability insurance as follows:

> 14(bb) requiring maintenance of professional liability insurance and prescribing the minimum limits of such insurance.

This clause permits the Institute to require members to maintain liability insurance and to set the minimum amount of coverage. The Committee was advised that the Institute does not presently require members to have liability insurance, but that it was believed that, as a prudent business decision, most, if not all, members would maintain insurance. The issue is still a point of active consideration within the Institute.

Recommendation

The Committee is of the view that it is essential that the public be protected from possible negligence by Chartered Accountants and that members be required to carry liability insurance. The Committee, however, believes that only members in public practice ought to be required to maintain liability insurance as employers of members in private organizations are in the best position to determine what protection they require for the actions of their employees.

Despite the presentation by the Accredited Public Accountants Association that the minimum level can best be determined by individual members, the Committee is of the view that the minimum level of insurance to be carried should be determined by the council. However, since not all practices require the same level of insurance, it is recommended that varying minimum levels be established in line with the needs of various practitioners.

The Committee recommends, therefore, that the new Act require members in public practice to obtain professional liability insurance, the minimum level to be determined by bylaw, with recognition for the varying needs of member firms.

LAY REPRESENTATIVE ON COUNCIL

The existing Act makes no provision for anyone but members of the Institute to be on the council. The proposed Act includes a new section (s. 8) which permits the Lieutenant Governor in Council to appoint a resident of Saskatchewan as a member of the council. The Institute proposed this change as a means to provide a window to the public on the internal operation of the profession, thus enhancing the protection of the public and of individual members of the Institute.

Recommendation

The Committee commends the Institute for this initiative and recommends that it be enacted as proposed.

DISCIPLINE PROVISIONS

The sections of the proposed Act dealing with procedures for discipline of members are sections 19 - 28. They provide for establishment of a professional conduct committee to investigate complaints against members, and, if necessary, to prosecute the case before the discipline committee. The discipline committee, which may consist of some persons who are not members of the Institute, hears and adjudicates a charge of professional misconduct and may expel or suspend a member, restrict his practice, reprimand the member or fine him and assess the costs of the hearing against him. Conviction for an indictable offence entitles the Institute to expel a member without further inquiry. A member who has been disciplined may appeal the disciplinary action to the full council, with a further right of appeal to the Court of Appeal.

Several representations were made to the Committee on the procedures set out in the proposed Act, with respect to the disciplinary proceedings. The major thrust of these submissions was that the procedures are too complicated, unruly and expensive. For example, it was suggested that complaints should be reviewed initially by an official of the Institute - a five member professional conduct committee is excessive. A number of other modifications to the disciplinary proceedings were proposed such as appointment of a Provincial Court Judge to the discipline committee. The Committee is not concerned about the detailed mechanics of the disciplinary proceedings such as the size and structure of committees, or whether a committee, or an officer, should investigate complaints but recommends that the government and the Institute give serious consideration to these recommendations. The Institute itself indicated during the public hearings that it was its intention to consider them further.

While not wishing to address every aspect of disciplinary procedures the Committee does wish to make recommendations on a number of specific areas noted below.

Appeal to Court of Appeal

The Committee recommends, as was suggested by a number of parties, that appeals to court on any matter under the Act, and especially on disciplinary matters, should be to the Court of Queen's Bench rather than to the Court of Appeal. The relatively quicker and less expensive procedures in the Queen's Bench make this alternative much more attractive.

Appeals from Disciplinary Action

The Committee heard several representations respecting whether an appeal from the discipline committee should be to the Council, with a further appeal to the Court, whether the appeal should be directly to the court, or whether the member should be given the option of either the council or the court. The Committee is of the view that most members would wish to have a final determination as quickly as possible and would proceed to the court even if given a choice. However, it is recognized that some disciplined members may wish to have the matter heard within the profession, rather than in open court.

Therefore, the Committee recommends that a disciplined member be given the right to appeal from the decision of the discipline committee to the council or to a judge of the Court of Queen's Bench with a further right of appeal to the court where an appeal is taken to the council. As well, the Committee recommends that the hearing of the appeal by the Court be a trial *de novo*, unless the parties agree to a determination on the basis of the record of the hearing before the discipline committee.

Practice Restriction

The Committee is also concerned that the Institute not have the power to restrict the practice in which a member may engage, and therefore recommends that the power of the discipline committee to order that a member not do specified types of work contained in section 23 be deleted.

Stay of Proceedings

Section 28 of the proposed Act provides that a disciplinary order of the Institute which is appealed to the court continues to apply unless the member applies to the Court to lift its effect pending the appeal. The Committee sees no reason why the ordinary rule that an appeal stays a previous order, unless otherwise ordered by the court should not apply in this situation. Therefore, it is recommended that the effect of section 28 be reversed so that an order is stayed pending the outcome of an appeal.

Duty to Report

The Committee noted that there is no legal onus on the Institute to notify proper legal authorities of possible criminal actions by its members which come to its attention in administering the Act. This is an issue of broad public concern which arises in all professional bodies.

The Committee recommends that the proposed Act be amended to place a positive duty on the council to notify appropriate legal authorities of any actions by members which could possibly constitute a criminal offence.

The Committee further recommends that a similar amendment be considered for inclusion in other professional acts at an appropriate time.

Criminal Charges

The Committee noted that there is no protection for a member who might be the subject of criminal investigation and prosecution, from disciplinary proceedings. While it is recognized that the alleged actions by a member may require disciplinary proceedings against him before the disposition of criminal charges, the Committee is concerned that the member's right to be presumed innocent until proven guilty in a criminal prosecution not be affected by sanctions against him by the Institute. Therefore, the Committee recommends that where criminal charges are laid against a member, all disciplinary proceedings against a member be stayed pending the disposition of those charges. If, however, the council believes the member ought to be suspended from practice, it should be permitted to apply to a judge of the Court of Queen's Bench to authorize the suspension.

Competency

It was pointed out to the Committee that lack of competency must be dealt with as professional misconduct under the proposed Act, and that it is unfair to a member to equate possible partial incompetency arising, for example, from ill-health with "misconduct". It was therefore proposed to the Committee that a special procedure be set out in the Act to deal with such situations, as is provided presently in *The Medical Profession Act, 1981*.

The Committee is of the view that the special provisions of *The Medical Profession Act, 1981* are a result of the specialized nature of medical practice, in which certain physical skills and abilities are required which may become insufficient for a variety of reasons. Each Chartered Accountant practices as a Chartered Accountant, without restriction. If the competency of a member is brought into question, his whole livelihood comes into consideration. Particularly in light of the Committee's recommendation that the power to restrict practice be removed from the powers of the discipline committee, the Committee sees no need to establish separate competency hearing procedures.

RIGHT OF APPEAL RE: REINSTATEMENT

Section 31 provides the procedures to be followed where a member of the Institute who has been expelled applies for reinstatement to the Institute, including the right of appeal to the Court of Appeal when reinstatement is refused. Some witnesses pointed out that no legal principles are involved in this determination and that the appeal to the court is improper. As well, no similar right of appeal is provided to applicants for initial admittance to the Institute.

Recommendation

The members of the Committee believe that the right of appeal is justified, and should not be deleted. The courts are often called upon to decide on issues on which judges are not expert. The issue to be considered by the court in an appeal from a refusal to reinstate are not peculiar to chartered accountants.

The fact that no appeal is provided to applicants for initial admittance does not cause concern for the Committee. No status has been lost by such individuals as is the case for applicants for reinstatement, and the Institute is given the right elsewhere to determine the qualifications of persons applying for admission.

As is the case of appeals related to other disciplinary matters, the Committee recommends that the appeal in section 31 be to the Court of Queen's Bench, rather than the Court of Appeal.

LIABILITY OF INSTITUTE

The relevant section of the proposed Act reads as follows:

> 32 No action lies against the institute, the council, members of the discipline committee or the professional conduct committee or any officer or employee of the institute for any proceedings taken in good faith or any decision or orders made or enforced under the provisions of this Act or the bylaws.

This provision would prevent an action even if proceedings were taken negligently, such as if disciplinary proceedings were commenced without sufficient investigation and the charges were later found to be groundless, provided the Institute sincerely believed the charge to be legitimate.

Recommendation

While individual members of council or committees of the Institute should be protected for actions taken in good faith in enforcing the Act or bylaws, the Committee is of the view that the Institute should not be given protection from possible liability for negligent actions on its part in enforcing the Act.

Therefore the Committee recommends that section 32 be modified by deleting reference to the Institute.

LIMITATION OF ACTIONS

Section 34 requires that an action against a chartered accountant for negligence or malpractice must be brought within three years after the termination of the services by the accountant, in respect of which the complaint arises. This provision is also contained in the existing legislation.

In the absence of such a provision, a legal action could be brought up to six years under *The Limitation of Actions Act*.

Recommendation

The Committee can see no justification for the special provision and therefore recommends deletion of section 34.

FILING OF MEMBERSHIP LISTS WITH DEPARTMENT OF CONSUMER AND COMMERCIAL AFFAIRS

The proposed Act contains sections requiring that certain information be filed with the Department of Consumer and Commercial Affairs as follows:

> 40 The institute shall, before February 1 in each year, file in the Department of Consumer and Commercial Affairs a return, certified by the secretary of the institute to be correct, showing:
>
> (a) the names and addresses and dates of admission to membership in the institute of all persons who became members during the preceding year;
>
> (b) the names and addresses of all students who became students during the preceding year;
>
> (c) the names of all persons who were suspended or expelled or otherwise ceased to be in good standing during that year;
>
> (d) the names of all members who were reinstated during that year;
>
> (e) any known changes in the addresses of members or students.
>
> 41 Upon receipt of the return required by section 40 the Minister of Consumer and Commercial Affairs shall cause the list of members and students on file in his department to be amended by the addition or insertion of appropriate entries in accordance with the information contained in the return.

These sections are standard provisions found in all professional association Acts. The Institute recommended deletion of the sections on the ground that the membership lists filed each February 1 with the Department of Consumer and Commercial Affairs are out of date almost immediately upon filing, and are not an accurate reflection of the existing membership of the Institute for most of the year.

The Institute pointed out that it keeps an up-to-date membership register in its head office, and has no objection to permitting access to it by any persons. The proposed new section 16 directs that the Institute keep a register of members, and permit any person to inspect it during normal office hours.

Recommendation

The Committee is of the view that the proposal of the Institute is a practical and simple approach and recommends deletion of sections 40 and 41 on the condition that section 16, as drafted, be retained.

MINISTERIAL INTERVENTION

Both the present Chartered Accountants Act and the proposed Act include two sections which provide for a role for the Minister in issues concerning membership in the Institute. Sections 42 and 43 of the proposed Act provide for a report to be made to the Minister when (a) a person is refused admission or reinstatement to membership and (b) a member or student is suspended or expelled. In the case of suspension or dismissal the Minister may take certain action if he thinks the action is unjust or not in the public interest. The Minister may request that the council or committee reconsider the case; he may appoint a board of arbitration or institute an appeal to the Court of Appeal.

This has been a standard provision in all Saskatchewan professional Acts since 1948. The Institute recommended the removal of these sections on the grounds that they are unwieldy and out of date. The section has seldom, if ever, been used. The historical background to the use of the sections was outlined in a brief to the Committee which also recommended that the sections be deleted as they were no longer needed.

Recommendation

Provisions for intervention by a minister are not found in professional acts in other jurisdictions and apparently are not being utilized here. The Committee is of the opinion that the legal safeguards provided in the Act through the appeal process are sufficient to protect individuals. In light of the above, the Committee recommends that sections 42 and 43 of the proposed Act be deleted.

USE OF "CERTIFIED ACCOUNTANT" PROHIBITED

The Certified General Accountants Association of Saskatchewan objected to the wording of subsection 17(2) which prohibits any person who is not a chartered accountant from representing that he is a "certified accountant". That Association felt that its members might be accused of offending *The Chartered Accountants Act*. It is noted that this wording is carried over from the existing statute and probably was overlooked for review when *The Certified General Accountants Act* was passed in 1978.

Recommendation

While the initials "C.A." are protected by the provisions of subsection 17(1), the Committee is concerned that if subsection 17(2) were modified to delete the reference to "certified accountant" as suggested by the Certified General Accountants Association of Saskatchewan, someone might utilize the title "certified accountant" and that this would not be in the interests of any of the established accounting bodies.

In recognition, however, of the concerns of the Certified General Accountants Association, the Committee recommends that subsection 17(2) be amended to prohibit use of the terms listed "except as authorized by any other Act".

TAXING OF ACCOUNTS

Members of the Committee raised the possibility of establishment of fee arbitration for clients of chartered accountants similar to that provided with respect to lawyers' accounts by the taxing procedures of *The Legal Profession Act*. It was noted that no professional body other than lawyers had such a provision in place, and the Institute noted that it has had in place, for some time, a fee mediation service to resolve disputes between clients and members. This service has never been used.

Recommendation

Without a mechanism for review, a client of a chartered accountant who objects to the statement of account of his accountant, has no alternative but to refuse to pay the bill, and wait to be sued by the accountant. The Committee is of the view that, at least for small amounts, this is unsatisfactory, and some mechanism should be established to permit clients to seek arbitration. The Committee recommends summary taxing of a bill by a judge of the Provincial Court up to the statutory maximum established pursuant to *The Small Claims Enforcement Act* (presently $3,000), with a right of appeal to a judge of the Court of Queen's Bench.

INCORPORATION

The Institute of Chartered Accountants indicated that it had proposed to the Government that provisions be included in the Act to permit incorporation of Chartered Accountants. The purpose of the incorporation would be to permit accountants to take advantage of any income tax advantages arising from that status and to benefit from the easier organization and operation of a corporation. This proposal would not, it was made clear, exempt incorporated accountants from personal liability for professional negligence.

Recommendation

Provisions for incorporation were not included in the proposed Act and the Committee makes no recommendation as to its inclusion in the new Act. The desirability of incorporation ought to be left for consideration on a global basis, in relation to all relevant professional associations, by the government.

APPENDICES

APPENDIX A

White Paper on Amendments to *The Management Accountants Act*

By amendments passed in the 1978 session of the Legislative Assembly, the name of the Society of Industrial Accountants was changed to the Society of Management Accountants of Saskatchewan. Notwithstanding the change in the name of the Society, members of the Society continue to be referred to as Registered Industrial Accountants (R.I.A.'s).

The Society has recommended that *The Management Accountants Act* be amended to permit use of the term "Registered Industrial Accountants" and "R.I.A.", or the term "Certified Management Accountant" and the initials "C.M.A.". The Society is of the view that this is in keeping with the previous amendments to the Act, the present role of management accountants and changes made in other jurisdictions from "R.I.A." to "C.M.A.".

However, other professional accounting associations, most notably the Certified General Accountants Association of Saskatchewan (C.G.A.'s) have raised concerns over the preparations of the management accountants to change their designations, on the basis that confusion could be engendered in the public as to the respective qualifications, areas of practice, and responsibility of the various accounting groups.

The Society has also requested that appropriate amendments be made to the Act to identify members of the Society as "Management Accountants" and to clearly delineate the role of management accountant in business and government.

The purpose of this white paper is to solicit public response, and representation from other professional associations as to the proposed option for members of the Society of Management Accountants to use the designation of Registered Industrial Accountant (R.I.A.) or Certified Management Accountant (C.M.A.), or to solicit representations for appropriate naming of all such associations to avoid public confusion, if any were to arise, from such a name change.

APPENDIX B

White Paper on a New Chartered Accountants Act

The council of the Institute of Chartered Accountants of Saskatchewan has proposed a new *Chartered Accountants Act* to be enacted by the Legislative Assembly. The existing legislation was enacted in 1934, and has remained virtually unchanged, but for housekeeping amendments, since that time. The Institute believes the 1934 Act has served both the Institute and the public well. However, the increasing complexities of commerce and the greater expectations of society require a legislative base more attuned to modern society to permit the Institute to deal with them.

The Institute proposes a new, updated Act to strengthen the protection of the public, to increase the role of members in the establishment of bylaws, to revise disciplinary procedures and to generally reflect the role of the profession in the modern business world.

To accomplish these goals, the Institute has proposed a number of new initiatives:

(a) appointment of a lay member to the council of the Institute;

(b) power to make bylaws on the following topics:

  (i) periodic random inspection of the practices of members;

  (ii) standards of professional conduct;

  (iii) requiring professional development by members and requiring members to maintain certain levels of professional competence;

  (iv) permitting specialists' certificates;

  (v) regulating advertising by members;

  (vi) regulating trust accounts of members and records that must be kept for them; and

  (vii) requiring members to maintain liability insurance.

(c) new disciplinary procedures, providing for investigation of complaints, new hearing procedures and appeals, as well as disciplinary action;

(d) modification of the standard reporting requirements contained in other professional association Acts respecting membership lists, and bylaw changes.

The Institute proposes that the provisions of the present Act permitting the council to make extensive bylaws be continued, but that the new Act require that a three-quarters majority approve any new or amended bylaws. As is now the case, any bylaw so passed would be subject to revocation, amendment or confirmation at the annual meeting of the Institute. The Institute also proposes that a new Act require that notice of any bylaw changes be given to all members within 30 days.

Despite these proposed provisions, many members of the Institute have opposed the new proposals, particularly those which permit institution of mandatory practice inspection, standards of professional conduct and mandatory professional development.

Attached to this paper is a proposal for a new *Chartered Accountants Act* based, in part, on the recommendations and representations of the Institute of Chartered Accountants of Saskatchewan on the provisions of other recent professional association Acts.

The purpose of this paper and the attached draft proposal is to permit free and open discussion amongst members of the Institute and interested members of the public of the new initiatives.

DRAFT PROPOSED ACT

An Act respecting the Institute of Chartered Accountants of Saskatchewan and to repeal The Chartered Accountants Act and The Certified Public Accountants Act

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of Saskatchewan, enacts as follows:

Short title

1 This Act may be cited as *The Chartered Accountants Act, 1984.*

Interpretation

2 In this Act:

"bylaws"

(a) "bylaws" means bylaws enacted pursuant to section 13;

"council"

(b) "council" means the council of the institute referred to in section 6;

"elected member"

(c) "elected member" means a member of council elected pursuant to section 7;

"institute

(d) "institute" means The Institute of Chartered Accountants of Saskatchewan continued pursuant to section 3;

"member"

(e) "member" means a person whose name is recorded as a member in the register;

"minister"

(f) "minister" means the member of the Executive Council to whom for the time being the administration of this Act is assigned;

"register"

(g) "register" means the register of members and students maintained pursuant to section 16;

"secretary"

(h) "secretary" means the secretary or secretary-treasurer of the institute appointed pursuant to subsection 10(2).

"student"

(i) "student" means a person whose name is recorded as a student in the register.

INSTITUTE

Institute and Association continued

3 The Institute of Chartered Accountants of Saskatchewan and The Certified Public Accountants Association of Saskatchewan are continued as a body corporate under the name of "The Institute of Chartered Accountants of Saskatchewan".

Members

4 The institute consists of those persons who are members in good standing pursuant to *The Chartered Accountants Act* or *The Certified Public Accountants Act* on the day before this section comes into force and those persons who become members pursuant to this Act.

Powers

5(1) The institute may purchase, lease, take, hold or otherwise acquire any property and may sell, mortgage, lease or otherwise dispose of any of that property.

(2) All fees, fines and penalties receivable or recoverable pursuant to this Act are the property of the institute.

(3) The institute may invest its funds in investments in which trustees are authorized to invest pursuant to *The Trustee Act*.

(4) The institute may grant certificates or annual licences to members.

COUNCIL

Council established

6(1) The affairs of the institute are under the management of a council consisting of:

(a) not less than six nor more than twenty persons, as may be determined by the bylaws, who are members residing in Saskatchewan, elected by the institute from among its members pursuant to section 7; and

(b) the person appointed pursuant to section 8.

(2) Those persons who are members of the council of the Institute of Chartered Accountants pursuant to *The Chartered Accountants Act* on the day before the day this section comes into force constitute the council until persons are elected and appointed as members of the council pursuant to this Act.

(3) Members of the council are entitled to remuneration and reimbursement for expenses in the amount determined by bylaw.

Elected Members

7(1) The members of the council referred to in clause 6(1)(a) shall be elected in accordance with the bylaws.

(2) Each member of the council referred to in clause 6(1)(a) holds office for the term determined in the bylaws.

(3) Each elected member of the council holds office until his successor is elected.

Appointment of person to council

8(1) The Lieutenant Governor in Council may appoint a resident of Saskatchewan as a member of the council.

(2) The person appointed pursuant to subsection (1) holds office for a term of two years and until his successor is appointed, but no such person is eligible to hold office for more than two consecutive terms.

(3) Subject to subsection 21(1) the member of the council appointed pursuant to this section may exercise rights, hold office and serve as a member of committees to the same extent as other members of the council, but no such member is eligible to hold office as president or vice-president of the council pursuant to subsection 6(3).

(4) The person appointed pursuant to subsection (1) is entitled to remuneration and reimbursement for expenses in the amount determined for other members of the council pursuant to subsection 6(3).

(5) Sums required for the purposes of subsection (4) are to be paid by the institute.

Vacancies

9(1) When a vacancy occurs in the membership of the council as a result of the death or resignation of a member of the council or for any other reason:

(a) in the case of a member of council referred to in clause 6(1)(a), the remaining members of council may elect another member to fill the vacancy until the next annual meeting of the institute;

(b) in the case of a member of council who was appointed pursuant to section 8, the Lieutenant Governor in Council may appoint another person to fill the vacancy for the remainder of the unexpired term of the person being replaced.

(2) A vacancy in the membership of the council does not impair the power of the remaining members of the council to act.

Officers and employees

10(1) The council shall, from its members, elect a president and one or more vice-presidents.

(2) The council shall appoint a secretary and a treasurer, or a secretary-treasurer and may:

(a) appoint such other officers as may be provided for by the bylaws; and

(b) engage any employees considered necessary to carry out the duties and functions of the institute.

(3) The council shall, subject to the bylaws, determine the duties, responsibilities and remuneration of officers and employees of the institute.

Committees

11(1) The council may appoint such committees as are provided for by this Act, the council or the bylaws and determine the remuneration to be paid to the committee members.

(2) The council may delegate to a committee appointed pursuant to subsection (1) any of its powers or duties other than those set out in section 26, on such terms or conditions as the council may determine.

(3) Subject to subsection 19(1), a member of a committee appointed pursuant to subsection (1) may be a person who is not a member.

MEETINGS OF INSTITUTE

Annual Meetings

12(1) An annual meeting of the members shall be held at such time and place as is determined by the council in accordance with the bylaws for the transaction of such business as may be brought before the meeting.

(2) The procedure at an annual meeting shall be as is determined by bylaw.

(3) A special meeting of the members shall be held:

(a) on resolution of the council; or

(b) on the demand in writing of at least 25 members;

for the transaction of such business as is specified in the resolution or demand.

(4) Notice of an annual or special meeting shall be given to each member by ordinary mail at least 10 days before the special meeting.

BYLAWS

Procedure

13(1) The council, with the approval of not less than three-quarters of its members, may pass bylaws for any purpose set out in section 14.

(2) A bylaw made by the council has force and effect only until the next annual or special meeting of the institute and, unless confirmed or varied by the members in accordance with subsection (3) ceases to have any force or effect.

(3) The institute at an annual or special meeting, with the approval of a majority of those who vote, may pass bylaws for any purpose set out in section 14 and confirm, vary or rescind any bylaw made by the council pursuant to subsection (1).

(4) The revocation or variation of a bylaw pursuant to subsection (3) does not affect the operation or application of the bylaw prior to its revocation or variation and everything done, omitted to be done or authorized pursuant to the bylaw is valid and effectual against all persons notwithstanding the revocation or variation, unless otherwise directed by a majority of members who vote at an annual meeting.

(5) The secretary shall notify each member, by ordinary mail, of each bylaw passed pursuant to subsection (1) or (3) or confirmed, varied or rescinded pursuant to subsection (3).

(6) Bylaws made pursuant to *The Chartered Accountants Act* or *The Certified Public Accountants Act* continue in force until varied or revoked pursuant to this section.

Powers

14 Subject to this Act, bylaws made pursuant to section 13 may be made for the following purposes:

(a) prescribing the seal of the institute;

(b) providing for the execution of documents by the institute;

(c) respecting banking and financial dealings of the institute;

(d) governing the application of moneys forming the funds of the institute;

(e) fixing the fiscal year of the institute and providing for the audit of the accounts and transactions of the institute;

(f) prescribing the number of, and the terms of office of members of the council referred to in clause 6(1)(a);

(g) prescribing the duties of members of the council and officers and employees of the institute;

(h) prescribing remuneration and reimbursement for expenses for members of council;

(i) governing procedures for the election of members of the council referred to in clause 6(1)(a);

(j) prescribing the organization, powers and procedure of the council and regulating the council in the performance of its duties;

(k) respecting the granting of diplomas, membership certificates or annual licences;

(l) respecting the calling, holding and procedures of meetings of the council and annual or special meetings of the institute;

(m) prescribing the qualifications, standards and tests of competency, standards of fitness and moral character for the registration of members and students of the institute;

(n) providing for honorary membership, life membership or fellowship in the institute and the qualifications, appointment and privileges of such membership;

(o) prescribing or establishing classes, lectures, courses of study, systems of training, periods of service and examinations for students and members;

(p) prescribing the amounts of registration and other fees payable to the institute, the times of payment and penalties for late payment;

(q) providing for the receipt, management and investment of contributions, donations or bequests from members or others;

(r) prescribing standards of professional conduct, competency and proficiency of members and students;

(s) prescribing the manner and method of practice of members and students;

(t) prescribing investigation and inspection of methods of practice and trust funds of members by members;

(u) prescribing procedures for the investigation by the professional conduct committee and hearings by the discipline committee of complaints or allegations that a member or student is guilty of professional misconduct or has violated one of the provisions of this Act or the bylaws;

(v) prescribing the composition of, and procedures for, the professional conduct committee and the discipline committee;

(w) governing the reinstatement of a member or student who has been expelled or suspended;

(x) defining activities which constitute a conflict of interest;

(y) prescribing procedures for periodic review of the qualifications of members, and prescribing the circumstances in which members are required to take refresher training programs and other courses of training;

(z) prescribing for the issuance, suspension and revocation of specialist certificates to members and prescribing the use of any title indicating specialist practice by a member;

(aa) regulating advertising by members;

(bb) requiring maintenance of professional liability insurance and prescribing the minimum limits of such insurance;

(cc) prescribing the books, records and accounts to be kept and maintained by members with respect to trust funds;

(dd) prescribing the form, content and maintenance of the register and the information to be provided by members, students and firms for the purposes of the register;

(ee) regulating joint participation by the institute, the council or members with any educational institution, or any person, groups, association, organization or body corporate having goals or objects similar to those of the institute;

(ff) generally, for the better carrying out of the provisions of this Act.

MEMBERSHIP

Members

15(1) Persons shall be admitted as members by council in accordance with the bylaws.

(2) The institute may admit any person to the institute as a fellow of the institute, or honourary member of the institute.

(3) Students are eligible to be registered as students to the institute by the council in accordance with the bylaws.

(4) Each member shall have the right to use the designation "Chartered Accountant" in English and "comptable agree" in French and may use after his name the initials "C.A.".

(5) A fellow of the institute admitted pursuant to subsection (2) may use the initials "F.C.A." after his name, signifying "Fellow of the Chartered Accountants".

Register

16(1) The council shall, in accordance with the bylaws, cause to be kept a register of all members and students.

(2) The register referred to in subsection (1) shall be kept open for inspection by all persons, without fee, during normal office hours.

(3) A copy of the register or an extract of the register certified by the secretary shall be accepted as *prima facie* evidence of its contents and that the members or students specified therein are members or students in good standing or suspended at the date of the certification, without proof of the signature or appointment of the secretary.

(4) The absence of the name of a person in a copy of the register or an indication that he is suspended as a member is *prima facie* proof that the person is not a member or student of the institute, or is suspended, as the case may be.

PROHIBITIONS AND PENALTIES

Prohibitions

17(1) No person who is not a member or fellow of the institute in good standing shall use the designations "Chartered Accountant", "comptable agree", "Certified Public Accountant", "C.A.", "A.C.A.", "F.C.A." or "C.P.A." either alone or in combination with other words or initials.

(2) No person who is not a member or fellow of the institute in good standing shall in any way represent that he is a chartered accountant, fellow of the chartered accountants, certified accountant or certified public accountant.

(3) Every person who contravenes subsection (1) or (2) is guilty of an offence and liable on summary conviction to a fine of not more than $1,000.

Limitations

18(1) The council may institute or authorize the institution of proceedings for an offence under subsection 17(1) or (2).

(2) No prosecution for an offence under subsection 17(1) or (2) is to be commenced after the expiration of one year from the date of the alleged offence.

DISCIPLINE

Professional Conduct Committee

19(1) The professional conduct committee is established consisting of at least five members appointed by the council.

(2) No member of council and no member of the discipline committee shall be appointed as a member of the professional conduct committee.

(3) Subject to this Act and the bylaws, the professional conduct committee may determine its procedure.

(4) Five members of the professional conduct committee constitute a quorum.

Investigation

20(1) Upon the complaint of any person, in writing, that a member or student is guilty of professional misconduct or a breach of a provision of this Act or the bylaws, the professional conduct committee shall review the complaint and shall:

(a) where the majority of that committee is of the opinion that the subject matter of the complaint does not constitute professional misconduct, or a breach of this Act or the bylaws, direct that no further action be taken; or

(b) investigate the complaint by taking any steps it considers necessary, including summoning before it the member whose conduct is the subject of the complaint.

(2) Upon completion of its investigation, the professional conduct committee shall make a written report to the discipline committee recommending that:

(a) the discipline committee hear and determine the formal complaint set out in the written report; or

(b) no further action be taken with respect to the matter under investigation;

and a report signed by a majority of the committee is a decision of the committee.

(3) Subject to clause 31(4)(c), no statement or evidence given by the member whose conduct is the subject of the complaint to the committee shall be used in evidence in any proceedings other than the investigation by that committee.

Discipline Committee

21(1) The discipline committee is established consisting of at least five persons appointed by the council, a majority of which shall be members.

(2) No member of council and no member of the professional conduct committee shall be appointed as a member of the discipline committee.

(3) The members of the discipline committee shall appoint a chairman of that committee.

(4) No member of the discipline committee who was a member of the professional conduct committee which investigated a complaint against a member shall participate in a hearing by the discipline committee of that complaint.

(5) Subject to this Act and the bylaws, the discipline committee may determine its procedure.

(6) Five members of the discipline committee constitute a quorum.

Hearing

22(1) Where a report of the professional conduct committee recommends that the discipline committee hear and determine a formal complaint, the secretary shall, at least two weeks prior to the date the committee is to sit:

(a) send a copy of the formal complaint to the member whose conduct is the subject matter of the hearing; and

(b) notify the member whose conduct is the subject of the hearing, of the date, time and place of the hearing.

(2) The professional conduct committee shall prosecute the formal complaint, but its members shall not participate in any other manner in the hearing of the complaint, except as witnesses when required.

(3) The discipline committee shall hear the formal complaint and shall decide whether or not the member is guilty of professional misconduct, a breach of this Act or the bylaws, notwithstanding the fact that the existence, interpretation or construction of a contract or the determination of any other question of fact may be involved, and the discipline committee need not refer any such matter to a court for adjudication.

(4) The discipline committee may accept any evidence that it considers appropriate and is not bound by rules of law concerning evidence.

(5) The discipline committee may employ at the expense of the institute, such legal or other assistance as it considers necessary, and the member whose conduct is subject of the hearing may at his own expense be represented by counsel.

(6) The testimony of witnesses shall be under oath administered by the chairman of the committee.

(7) At a hearing by the discipline committee, there shall be full right to examine, cross-examine and re-examine all witnesses and full right to adduce evidence in defence and reply.

(8) Upon the application of the member whose conduct is the subject of a hearing or a member of the discipline committee, the local registrar of Her Majesty's Court of Queen's Bench for Saskatchewan at any judicial centre shall, upon payment of the appropriate fees, issue writs of subpoena *ad testificandum* or subpoena *duces tecum* and, where such writ is disobeyed, the proceedings and penalties are those applicable in civil cases in Her Majesty's Court of Queen's Bench for Saskatchewan.

(9) Where the member whose conduct is subject of the inquiry fails to attend the hearing, upon proof of service of the notice referred to in subsection (1), the discipline committee may proceed with the inquiry in his absence.

(10) The discipline committee may, either in the absence of the member whose conduct is the subject of the complaint or with his consent, accept evidence upon affidavit.

Powers of Committee

23(1) Where the discipline committee finds a member guilty of professional misconduct, or a breach of this Act or the bylaws, it may:

(a) order that the member be expelled from the institute and that his name be struck from the register;

(b) order that the member be suspended from practising for a specified period of time;

(c) order that the member may continue to practise only under conditions specified in the order which conditions may include, but are not restricted to, an order that the member:

(i) not do specified types of work;

(ii) successfully complete specified classes or courses of instruction;

(iii) not have exclusive control of a trust account;

(iv) obtain medical treatment;

(d) reprimand the member; or

(e) make any other order that seems just.

(2) In addition to any order made pursuant to subsection (1), the discipline committee may order:

(a) that the member pay to the institute within a fixed period:

(i) a fine in a specified amount; and

(ii) the costs of the inquiry and hearing into the member's conduct and related costs, including the expenses of the professional conduct committee and the discipline committee; and

(b) where a member fails to make payment in accordance with an order under clause (a), that the member be suspended from practising.

(3) The discipline committee shall send a copy of an order made pursuant to subsection (1) or (2) to the member whose conduct is the subject of the order and to the person, if any, who made the complaint.

(4) Where a member is expelled or suspended from the institute, the secretary shall strike the name of the member from the register or indicate the suspension on the register, as the case may be.

Professional misconduct

24 Professional misconduct is a question of fact but any matter, conduct or thing, whether or not disgraceful or dishonourable that is inimical to the best interests of the public or the members of the institute or tends to harm the standing of the profession of accounting, is professional misconduct within the meaning of this Act.

Conviction for indictable offence

25 A member who has been convicted of an indictable offence under the *Criminal Code*, as amended from time to time, may, upon the report of the professional conduct committee, be expelled from the institute by resolution of the discipline committee without further inquiry.

Appeal to council

26(1) A member who has been found guilty by the discipline committee may appeal the decision or any order of the discipline committee to the council within thirty days of the order of the discipline committee.

(2) Upon receipt of an appeal, the secretary shall file with the council a true copy of:

(a) the notice of inquiry;

(b) the transcript of the evidence presented to the discipline committee;

(c) the decision and order of the discipline committee.

(3) Upon payment of the prescribed fee, the appellant or his solicitor or agent may obtain from the secretary a copy of the documents filed pursuant to subsection (2).

(4) In hearing an appeal, the council shall:

(a) dismiss the appeal;

(b) quash the finding of guilty;

(c) direct a new hearing or further inquiries by the discipline committee; or

(d) vary the order of the discipline committee

and may make any order as to costs that it considers appropriate.

(5) A decision of the majority of the council pursuant to subsection (4) is a decision of the council.

Appeal to the Court of Appeal

27(1) A member who is the subject of decision or order of the council pursuant to section 26 may appeal that decision or order to the Court of Appeal, within thirty days of the decision or order of the council by:

(a) filing a notice of appeal with the registrar of the Court of Appeal; and

(b) serving the secretary with a copy of the notice of appeal.

(2) Upon receipt of a notice of appeal pursuant to subsection (1), the secretary shall file with the Court of Appeal a true copy of:

(a) the notice of inquiry;

(b) the transcript of evidence presented to the discipline committee;

(c) the decision and order of the discipline committee;

(d) the decision and order of the council.

(3) Upon payment of the prescribed fee, the appellant or his solicitor or agent may obtain from the secretary a copy of the documents filed pursuant to subsection (2).

(4) In hearing an appeal under this section, the Court of Appeal shall:

(a) dismiss the appeal;

(b) quash the finding of guilty;

(c) direct a new hearing;

(d) vary the order of the council;

and may make any order as to costs that it considers appropriate.

Effect of Appeal

28 The commencement of an appeal to the council or to the Court of Appeal does not stay the effect of an order or decision of the discipline committee or the council, respectively but upon two days' notice to the secretary, the appellant may, in respect of an appeal to the Court of Appeal, appiy to that court for a stay of proceedings pending the disposition of the appeal.

Students

29 Where it is alleged that a student is guilty of professional misconduct or a breach of this Act or the bylaws, the provisions of sections 19 to 28 apply, *mutatis mutandis*.

Effect of Expulsion

30 Where a member is expelled from the institute or his right to practise is suspended pursuant to this Act, his rights and privileges as a member are removed as long as he is expelled or for the period of his suspension.

Reinstatement

31(1) A person who has been expelled from the institute may apply to the council for reinstatement.

(2) Upon receipt of an application pursuant to subsection (1), the council may:

(a) cause any investigation to be conducted in any manner that may be prescribed in the bylaws;

(b) where a majority of the council is satisfied that the person's subsequent conduct and any other facts warrant reinstatement, order that the member be reinstated on any terms and conditions that the council considers appropriate; or

(c) refuse to reinstate the person.

(3) Where, on application pursuant to subsection (1), the council refuses to reinstate the person as a member, the applicant may, within six months after the date of the order, appeal the order of council to the Court of Appeal and the Court of Appeal may allow or disallow the appeal.

(4) On an appeal pursuant to subsection (3), the Court of Appeal shall consider:

(a) the proceedings before the council on the application for reinstatement;

(b) the past record of the appellant as shown by the books and records of the institute;

(c) the evidence taken before the council and any committee which dealt with the matter and the report of that committee;

(d) the decision which is the subject of the appeal;

and the provisions of section 27 apply, *mutatis mutandis*.

No action against committees or members

32 No action lies against the institute, the council, members of the discipline committee or the professional conduct committee or any officer or employee of the institute for any proceedings taken in good faith or any decision or orders made or enforced under the provisions of this Act or the bylaws.

GENERAL

Liability of members

33 No member or student is personally liable for any debt of the institute beyond the amount of his unpaid fees or dues.

Limitation of Actions

34 No member is liable in an action for negligence or malpractice by reason of professional services requested or rendered unless the action is commenced within three years from the date when, in the matter complained of, the professional services terminated.

Bylaws

35(1) The institute shall file in the Department of Consumer and Commercial Affairs two copies, certified by the secretary to be true copies, of:

(a) all bylaws made, confirmed or varied pursuant to subsection 13(3); and

(b) all amendments made to such bylaws;

within thirty days after they are made.

(2) Where a bylaw, rule or regulation is amended, two copies of it shall be filed with the amendment.

Effective date of bylaws

36 All bylaws and amendments to them shall take effect upon the making of them or on a date stated in them for the purpose.

Effect of failure to file bylaw

37 Failure to file any bylaw, rule, regulation or amendment as required by section 35 shall render the bylaw or amendment ineffective as from the expiration of the time allowed for filing it and it shall be deemed to have been revoked.

Review by Legislative Assembly

38(1) One copy of all bylaws and amendments filed with the Department of Consumer and Commercial Affairs pursuant to section 35 shall, in accordance with *The Tabling of Documents Act*, be laid before the Legislative Assembly.

(2) Where any bylaw or amendment thereto laid before the Legislative Assembly is found by the Assembly to be beyond the powers delegated by the Legislature or in any way prejudicial to the public interest, such bylaw or amendment shall thereupon cease to have any effect and be deemed to have been revoked.

Record of revocation and notification

39(1) Where it appears from any Votes and Proceedings of the Legislative Assembly that any bylaw or amendment has ceased to have effect, the Clerk of the Assembly shall forthwith forward two copies of such Votes and Proceedings to the Deputy Minister of Consumer and Commercial Affairs and at the same time advise him that the copies are forwarded pursuant to this subsection.

(2) Upon receipt of such copies the Deputy Minister of Consumer and Commercial Affairs shall file one of the copies with the bylaw or amendment to which it relates and immediately forward the other copy to the institute and at the same time advise the institute that the copy is forwarded pursuant to this subsection.

List of members, etc., to be filed

40 The institute shall, before February 1 in each year, file in the Department of Consumer and Commercial Affairs a return, certified by the secretary of the institute to be correct, showing:

(a) the names and addresses and dates of admission to membership in the institute of all persons who became members during the preceding year;

(b) the names and addresses of all students who became students during the preceding year;

(c) the names of all persons who were suspended or expelled or otherwise ceased to be in good standing during that year;

(d) the names of all members who were reinstated during that year;

(e) any known changes in the addresses of members or students.

Additions to and alterations in list

41 Upon receipt of the return required by section 40 the Minister of Consumer and Commercial Affairs shall cause the list of members and students on file in his department to be amended by the addition or insertion of appropriate entries in accordance with the information contained in the return.

Report to Minister of Finance

42 Where an application for reinstatement or for admission to membership in the institute or for admission as a student is made in compliance with this Act and the bylaws and is refused, the institute shall, within seven days, forward by registered mail to the minister a report setting forth the circumstances and stating the reasons for the refusal.

Discipline

43(1) Where the council or disciplinary committee suspends or expells a member or a student, the institute shall within fourteen days after the date of suspension or expulsion forward by registered mail to the minister a copy, certified by the secretary to be a true copy, of the complaint, any report upon the conduct of the person suspended or dismissed and the order of the council or discipline committee, and shall furnish the minister with such relative information as he may require.

(2) If the minister is of opinion that the suspension or dismissal is unjust or contrary to the public interest, he may:

(a) request the council or discipline committee to reconsider the case and its findings;

(b) if the council or discipline committee and the member whose conduct is under inquiry agree, appoint a board of arbitration consisting of one member nominated by the council, one nominated by the member whose conduct is under inquiry and one appointed by the Lieutenant Governor in Council to review or rehear the case and render decision thereon; or

(c) institute an appeal to of the Court of Appeal.

(3) Nothing in this section shall prejudice any right of appeal conferred by this Act.

Examinations

44(1) The examination of candidates for admission to the institute shall be under the control of either the University of Saskatchewan or the University of Regina as is determined by council.

(2) The Senate of either or both Universities may after consultation with the council:

(a) appoint a board of examiners to examine all candidates;

(b) make rules governing the conduct of examination and prescribing the fees payable by candidates.

(3) The registrar of the university conducting the examination shall report the result of all of the examinations to the secretary.

Rev. Stat. C-7 and C-5 Repealed

45 *The Chartered Accountants Act* and *The Certified Public Accountants Act* are repealed.

Coming into Force

46 This Act or any provision of this Act comes into force on a day or days to be fixed by proclamation of the Lieutenant Governor.

APPENDIX C

LIST OF BRIEFS

B-1 W. John Brennan, Dean of the College of Commerce, University of Saskatchewan, re CMA designation (S.P. 211)

B-2 Saskatchewan Wheat Pool re CMA designation (S.P. 211)

B-3 Society of Management Accountants re new Chartered Accountants Act (S.P. 210)

B-4 Society of Management Accountants re CMA designation (S.P. 211)

B-5 S. Schopp, C.A. of Prince Albert re new Chartered Accountants Act (S.P. 210)

B-6 J.J. Skilnick of Gibson, Shaw, Skilnick and Kemp of Melville re new CA Act (S.P. 210)

B-7 Institute of Chartered Accountants of Saskatchewan re CMA designation (S.P. 211)

B-8 Deloitte, Haskins & Sells of Saskatoon re CMA designation (S.P. 211)

B-9 PCS Mining, Saskatoon, re CMA designation (S.P. 211)

B-10 E. Dean Burlingham of Saskatoon re new CA Act (S.P. 210)

B-11 Institute of Chartered Accountants of Saskatchewan re new CA Act (S.P. 210)

B-12 Certified General Accountants Association of Saskatchewan re new CA Act (S.P. 210)

B-13 Certified General Accountants Association of Saskatchewan re CMA designation (S.P. 211)

B-14 Accredited Public Accountants of Saskatchewan re new Management Accountants Act (S.P. 211)

B-15 Accredited Public Accountants of Saskatchewan re new CA Act (S.P. 210)

B-16 M.J. Spicer and F.L. Dunbar of Regina re new CA Act (S.P. 210)

B-18 Comments of the Institute of Chartered Accountants of Saskatchewan to Briefs submitted on the White Paper on The Chartered Accountants Act (S.P. 210)

B-19 Neil H. Manning, CA, Biggar, re new CA Act (S.P. 210)

APPENDIX D

List of Oral Presentations

On Sessional Paper 211

Society of Management Accountants
- Mr. Ray Meyer, Past President
- Mr. Jim Pealow, Executive Secretary
- Mr. Alex Kocur, President

Certified General Accountants
- Mr. Tom Strutt, Solicitor
- Mr. Peter Morin, President
- Mr. Gordon Dillon, Chairman of Legislative Committee

Accredited Public Accountants
- Mr. Paul Matlock, Vice President
- Mrs. I. Strelioff, Secretary-Treasurer
- Mr. R. Strelioff, Past President

Professor W. John Brennan, Dean of College of Commerce, University of Saskatchewan

Professor Bruce Irvine, College of Commerce, University of Saskatchewan

On Sessional Paper 210

Institute of Chartered Accountants of Saskatchewan
- Mr. Donald Gass, President
- Mr. Ole Ramstead, Member of Council
- Mr. J.A. Ferguson, past Member of Council
- Mr. Donald Stankov, Member of Council
- Mr. Les Cannam, First Vice-President
- Mr. John Florek, Executive Director
- Mr. G.W. Semenchuck, Solicitor

Certified General Accountants
- Mr. Tom Strutt, Solicitor
- Mr. Gordon Dillon, Chairman of Legislative Committee

Mr. J.J. Skilnick of Gibson, Shaw, Skilnick and Kemp, Melville

Mr. F.L. Dunbar, Regina and Mr. M.J. Spicer, Regina

Mr. E. Dean Burlingham of Burlingham & Co., Saskatoon

Professor D.T. Lowery, Associate Vice President, University of Regina

Accredited Public Accountants
- Ms. Lucille Lamb, Solicitor
- Mr. Paul Matlock, Vice-President
- Mrs. I. Strelioff, Secretary-Treasurer
- Mr. R. Strelioff, Past President

Mr. S. Schopp, Prince Albert

Professor W. John Brennan, College of Commerce, University of Saskatchewan